

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FCS ADVISORS, LLC,

Plaintiff,

—against—

21 Civ. 6995 (PKC)

THEIA GROUP, INC., d/b/a “THORIAN  
GROUP” and/or “CYPHERIAN”; THEIA  
AVIATION, LLC; and THEIA HOLDINGS  
A, INC., d/b/a “THORIAN HOLDINGS,”

Defendants.

**FIFTH INTERIM REPORT OF RECEIVER**

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*Counsel for Michael Fuqua, in his capacity as Receiver of  
Theia Group, Inc., Theia Aviation LLC, and Theia Holdings A, Inc.*

Michael Fuqua, Court-appointed receiver (the “Receiver”) for Theia Group, Inc. (“TGI”), Theia Aviation LLC, and Theia Holdings A, Inc. (collectively, the “Receivership Entities”), respectfully submits this Status Report (the “Report”) for the fifth reporting period (the “Reporting Period”) in accordance with the Order of this Court entered on November 8, 2021 (the “Receivership Order”), and for the purpose of reporting the status of the Receiver’s work and findings during the Reporting Period. The facts presented in this Report are preliminary and may be amended and changed as the Receiver’s investigation continues. This Report includes the preliminary assessment of the Receiver’s counsel, Reed Smith LLP (“Reed Smith”) and King & Spalding LLP, as well as the consultants and advisers retained by the Receiver’s counsel, including GlassRatner Advisory & Capital Group, LLC d/b/a B. Riley Advisory Services (“B. Riley”) and PJT Partners, LP.

## **I. PROTECTING THE RECEIVERSHIP ESTATE ASSETS**

### **A. Extension of Receivership Stay**

During the Reporting Period, the Receiver, through Reed Smith, sought a further extension of the stay imposed by the Receivership Order (the “Receivership Stay”). On July 14, 2022, the Court entered an Order (the “Stay Extension Order”) further extending the stay imposed by the Receivership Stay through and including October 15, 2022, without prejudice to the Receiver’s right to request further extensions of the Receivership Stay. An extension of the Receivership Stay was necessary to preserve the Receivership Entities’ assets and allow the Receiver to maximize the value of such assets for the benefit of creditors by continuing the Receiver’s sale process outside of bankruptcy proceedings. At the Receiver’s request, Reed Smith facilitated the filing of the Stay Extension Order in fifteen (15) pending litigation matters.

## **B. Financial & Accounting Records**

The Receiver continues to maintain the Receivership Entities' books and records and his analysis of the pre-receivership accounts is ongoing. The Receiver is working with taxing authorities to identify amounts owed and has retained Carr Riggs & Ingram as the Receiver's tax professionals following the withdrawal of Cherry Baekert.

## **C. Federal Communications Commission**

During the Reporting Period, the Receiver continued to maintain open lines of communication with the Federal Communications Commission (the "FCC"). Akin Gump Strauss Hauer & Feld LLP continues to represent the Receiver in connection with matters before the FCC and the Committee on Foreign Investment in the United States ("CFIUS") and provides periodic updates to the FCC and/or CFIUS regarding the receivership case.

## **D. Intellectual Property**

The Receiver continues to work with Frank J. Bonini, Jr., Esq. of Bonini Law to protect the Receivership Entities' domestic and international intellectual property filings (*i.e.*, trademarks and patents) by insuring the payment of renewal and other required fees and amounts due.

Bonini Law and Reed Smith prepared documentation required to effect the transfer of certain of the Receivership Entities' intellectual property assets that currently are held by non-receivership entities back to TGI. This included the drafting of intellectual property transfer agreements as well as documents necessary to implement a transfer of the equity of two non-receivership entities to TGI in order to ensure that all intellectual property could be transferred to TGI. Reed Smith and the Receiver also determined the tax consequences of such a transfer of assets.

During the Reporting Period, the Receiver engaged a consultant regarding matters related to the International Telecommunications Union and to advise to Receiver regarding actions required to maintain the Receivership Entities' intellectual property. Reed Smith prepared the consulting agreement for the Receiver.

## **II. DISPOSITION OF RECEIVERSHIP ESTATE ASSETS**

### **A. Auction Process**

During the Reporting Period, the Receiver continued to engage in negotiations with multiple interested parties to become the “stalking horse” bidder for the assets of the Receivership Entities, including the spectrum license (the “FCC License”) granted to TGI by the FCC and the license granted to TGI by the National Oceanic and Atmospheric Administration (“NOAA” and such license, the “NOAA License”). One of the potential stalking horse bidders reportedly is working to secure financing and has indicated its continued interest in bidding for both the FCC License and the NOAA License. Another potential stalking horse bidder recently entered into discussions with the Receivership Entities' first-priority secured creditor regarding a potential transaction and the structure of a possible bid. The auction sale process remains ongoing.

### **B. Enterprise Sale**

A potential purchaser, Rising Sky LLC (“Rising Sky”), is seeking to acquire the assets of the Receivership Entities through its purchase of certain claims against the Receivership Entities and the satisfaction of such claims, plus a cash pool in exchange for the Receivership Entities' assets. Rising Sky seeks to acquire (i) the FCC License, (ii) the NOAA License, (iii) the Receivership Entities' aircraft (one non-functional plane and one functional plane formerly leased to a third party, but now securely parked at Basler Aviation in Oshkosh, Wisconsin), (iv) sensing equipment, and (v) a contract for the production of three (3) aircraft with a substantial deposit.

During the Reporting Period, Rising Sky continued to negotiate directly with various creditor constituencies to facilitate the submission of its bid and took further affirmative steps towards making an offer to purchase the Receivership Entities' assets. Specifically, the Receiver understands that Rising Sky has (i) successfully negotiated a lease for the Receivership Entities' former headquarters in Washington, D.C.; (ii) extended employment proposals to its prospective leadership team; (iii) is in the process of completing the trustworthiness documentation for submission to NOAA as well as transfer documentation required for the FCC License; and (iv) reportedly is preparing to making initial payments to certain parties that have agreed to sell their claims to Rising Sky.

Rising Sky recently submitted a proposed form of *Asset Purchase Agreement* to the Receiver for review. The Receiver and Reed Smith currently are analyzing the proposed *Asset Purchase Agreement*, the sale structure, and the potential federal, state and local tax implications of the proposed transaction with Rising Sky.

### **III. FORENSIC FINANCIAL ANALYSIS / RECONCILIATION**

During the Reporting Period, the Receiver and his advisors continued their forensic accounting activities with regard to the following areas:

#### **A. "Friends and Family" Notes Analysis**

During the Reporting Period, the Receiver and his team successfully completed an analysis and cash reconciliation of the "Friends and Family" notes. The analysis reflects that the Receivership Entities received approximately \$75 million in connection with 262 "Friends and Family" notes issued by the Receivership Entities. Approximately \$225 million of principal and interest remains outstanding with respect to the "Friends and Family" notes.

## **B. Trade Vendor & Contractor Accounts Payable**

Subsequent to their initial analysis, the Receiver and B. Riley continue to refine amounts due to vendors, contractors, and taxing authorities based on contracts that have thus far been located.

## **IV. ONGOING DEPARTMENT OF JUSTICE INVESTIGATION**

During the Reporting Period, the Receiver continued to cooperate with the United States Department of Justice in responding and producing documents related to four (4) broad grand jury subpoenas issued by the United States District Court for the District of Columbia to produce certain documents, including two (2) broad subpoenas issued to the Receivership Entities prior to the Receiver's appointment. The Receiver's review and analysis of the Receivership Entities' files is ongoing, and documents continue to be reviewed and produced on a rolling basis.

## **V. MISCELLANEOUS**

During the Reporting Period, the Receiver, through Reed Smith, responded to and conferred with opposing counsel regarding a motion for relief from the Receivership Stay by a former member of the Receivership Entities' management, which the Court denied by Order entered on July 14, 2022. At the direction of the Court, the Receiver filed a "Notice of Undertaking" by which he agreed to (i) preserve all documents related to the claims of the former member of the Receivership Entities' management and (ii) not assert any statute of limitations defenses with respect to such claims.

At the Receiver's request, counsel drafted proposed amended and restated loan documents for a potential increase in the receivership loan from FCS Advisors, LLC pursuant to that certain *Receiver's Certificate and Purchase Security Agreement*. The Receiver intends to seek Court approval of the proposed increase in the loan amount in the near future.

The Receiver, through Reed Smith, took the deposition of Dr. James R. Wertz, a member of the management of Microcosm, Inc. (“Microcosm”) and Scorpius Space Launch Corporation, Inc. (“Scorpius”), two vendors previously engaged by the Receivership Entities. In a filing on July 22, 2022, the vendors sought to lift the Receivership Stay and made various assertions regarding the Receiver that were inaccurate. The deposition was taken to preserve the record on such issues. The Receiver offered to provide counsel for Microcosm and Scorpius with periodic updates of public information regarding the sale process. The Receiver will continue maintaining open lines of communication with the vendors going forward regarding the sale process.

The Court also entered Orders granting the second omnibus fee applications of both Reed Smith and B. Riley.

Dated: September 21, 2022  
New York, New York

Respectfully submitted,

REED SMITH LLP

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